

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LOYOLA F. BAIN)	
Claimant)	
VS.)	
)	Docket No. 222,967
CORMACK ENTERPRISES, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appeal from the July 15, 1998 Award entered by Administrative Law Judge Bryce D. Benedict.

APPEARANCES

Paul D. Post of Topeka, Kansas, appeared for claimant. Jeffery R. Brewer of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the July 15, 1998 Award.

ISSUES

On appeal, respondent raises three issues:

- (1) Whether claimant provided timely notice.
- (2) Payment of temporary total disability compensation.
- (3) Payment of medical expenses.

In its brief to the Appeals Board, however, respondent explained that the issues it raised concerning temporary total disability and medical compensation were, in fact, issues based upon the argument that the claim is not compensable due to a lack of timely notice. Accordingly, whether notice was timely given is the only issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award by the ALJ should be affirmed.

The ALJ found claimant failed to give notice of accidental injury within 10 days but there was just cause for extending claimant's time for giving notice. Respondent challenges the finding of just cause. The ALJ further held that the just cause claimant had ended by March 24, 1997 when she realized her condition was serious enough to require medical treatment. The ALJ found that the notice claimant gave her employer on April 2, 1997 was timely because it fell within 10 days of March 24, 1997. The Appeals Board disagrees that K.S.A. 44-520 requires notice be given within 10 days of whatever date it is found that just cause ceased. Instead, where the time for giving notice is extended beyond 10 days by a finding of just cause, the statute provides that notice must be given within 75 days. But, in this case, a finding of just cause is not necessary because, for the reasons more fully explained in the Appeals Board's decision in Scruggs v. Overland Park Regional Medical Center, Docket No. 225,060 (Dec. 1997), a proper time computation establishes that claimant gave notice within 10 days. Claimant's accident occurred Friday, March 21, 1997. She gave notice on Wednesday, April 2, 1997. Excluding intervening Saturdays, Sundays and holidays, this was a period of less than 10 days. See McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996).

Respondent submits that McIntyre was incorrectly decided by the Court of Appeals. The Board, nevertheless, must follow the holding in McIntyre unless and until it is reversed, modified or distinguished by an appellate court.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 15, 1998 Award entered by Administrative Law Judge Bryce D. Benedict should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Post, Topeka, KS
Jeffery R. Brewer, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director